

## Senate Bill No. 746

### CHAPTER 995

An act to amend Section 6600 of, and to add Section 727.2 to, the Welfare and Institutions Code, relating to sexual predators.

[Approved by Governor October 10, 1999. Filed  
with Secretary of State October 10, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 746, Schiff. Sexually violent predators.

Existing law sets forth procedures under which a person under the jurisdiction of the Department of Corrections may be referred for evaluation at least 6 months prior to the person's scheduled date for release from prison if the director determines that the person may be a sexually violent predator. Existing law provides, under certain circumstances, that this person may be required to stand trial, be found beyond a reasonable doubt to be a sexually violent predator, and be committed for 2 years to the custody of the State Department of Mental Health for treatment and confinement in a secure facility until his or her diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.

Existing law defines sexually violent predator, for purposes of these provisions, to mean a person who has been convicted of a sexually violent offense against 2 or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

This bill would provide that a prior conviction for which a person received a determinate sentence shall include a prior juvenile adjudication of a sexually violent offense if certain conditions exist.

Existing law authorizes the juvenile court to make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of a minor who has been adjudged a ward of the juvenile court for the violation of any law or ordinance or because the minor is beyond control, violates curfew, or persistently and habitually refuses to obey the reasonable and proper directives of his or her parents, guardian, or custodian.

This bill would entitle a minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense to specific treatment as a sexual offender. The bill would provide that the failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator, as defined.

This bill would incorporate additional changes to Sections 6600 of the Welfare and Institutions Code proposed by AB 1458 and SB 786, to be operative if this bill, AB 1458 and SB 786 are enacted and become effective on or before January 1, 2000, and this bill is enacted last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 727.2 is added to the Welfare and Institutions Code, to read:

727.2. Where any minor has been adjudged a ward of the court for the commission of a “sexually violent offense,” as defined in Section 6600, and committed to the Department of the Youth Authority, the ward shall be given sexual offender treatment consistent with protocols for that treatment developed or implemented by the Department of the Youth Authority.

SEC. 2. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a) “Sexually violent predator” means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

For purposes of this subdivision, a prior finding of not guilty by reason of insanity for an offense described in subdivision (b), a conviction prior to July 1, 1977, for an offense described in subdivision (b), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another state for an offense that includes all the elements of an offense described in subdivision (b), shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent



relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) “Diagnosed mental disorder” includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) “Danger to the health and safety of others” does not require proof of a recent overt act while the offender is in custody.

(e) “Predatory” means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) “Recent overt act” means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, no more than one prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following applies:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person’s commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a

determination that any person is a sexually violent predator within the meaning of this article.

SEC. 2.1. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a) “Sexually violent predator” means a person who has been convicted of a sexually violent offense against two or more victims who is currently in custody under the jurisdiction of the Department of Corrections, and who is serving any determinate or indeterminate sentence or whose parole has been revoked, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

For purposes of this subdivision, a prior finding of not guilty by reason of insanity for an offense described in subdivision (b), a conviction prior to July 1, 1977, for an offense described in subdivision (b), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another state for an offense that includes all the elements of an offense described in subdivision (b), shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, Section 288.5, or subdivision (a) of Section 289 of the Penal Code, or



sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) “Diagnosed mental disorder” includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) “Danger to the health and safety of others” does not require proof of a recent overt act while the offender is in custody.

(e) “Predatory” means an act is directed toward a stranger, a child under the age of 14 years, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) “Recent overt act” means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, no more than one prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following apply:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person’s commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 2.2. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a) “Sexually violent predator” means a person who has been convicted of a sexually violent offense against two or more victims for which he or she received a determinate sentence and who has a diagnosed mental disorder that makes the person a danger to the

health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

For purposes of this subdivision, a prior finding of not guilty by reason of insanity for an offense described in subdivision (b), a conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b), a conviction prior to July 1, 1977, for an offense described in subdivision (b), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another jurisdiction for an offense that includes all the elements of an offense described in subdivision (b), shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) “Diagnosed mental disorder” includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) “Danger to the health and safety of others” does not require proof of a recent overt act while the offender is in custody.



(e) “Predatory” means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) “Recent overt act” means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, no more than one prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following applies:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person’s commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 2.3. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a) “Sexually violent predator” means a person who has been convicted of a sexually violent offense against two or more victims who is currently in custody under the jurisdiction of the Department of Corrections, and who is serving any determinate or indeterminate sentence or whose parole has been revoked, and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

For purposes of this subdivision, a prior finding of not guilty by reason of insanity for an offense described in subdivision (b), a conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b) a conviction prior to July 1, 1977, for an offense described in subdivision (b), a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another jurisdiction for an



offense that includes all the elements of an offense described in subdivision (b), shall also be deemed to be a sexually violent offense even if the offender did not receive a determinate sentence for that prior offense.

Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an offense that led to a prior conviction may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as provided in subdivision (a): a felony violation of paragraph (2) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262, Section 264.1, subdivision (a) or (b) of Section 288, Section 288.5, or subdivision (a) of Section 289 of the Penal Code, or sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code.

(c) “Diagnosed mental disorder” includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) “Danger to the health and safety of others” does not require proof of a recent overt act while the offender is in custody.

(e) “Predatory” means an act is directed toward a stranger, a child under the age of 14 years, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) “Recent overt act” means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, no more than one prior juvenile adjudication of a



sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following apply:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 6600 of the Welfare and Institutions Code proposed by both this bill and AB 1458. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 6600 of the Welfare and Institutions Code, (3) SB 786 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1458, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 6600 of the Welfare and Institutions Code proposed by both this bill and SB 786. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 6600 of the Welfare and Institutions Code, (3) AB 1458 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 786, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 6600 of the Welfare and Institutions Code proposed by this bill, AB 1458, and SB 786. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) all three bills amend Section 6600 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1458, and SB 786, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.